



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~XAVIER WILSON~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Walter C. Woodward, Chairman
Board of Insurance Commissioners
Austin, Texas

Dear Sir:

Opinion No. O-1471

Re: The provisions of Senate Bill No. 397,
Acts of the Regular Session of the 46th
Legislature, and of the special rider
attached to the General Appropriation
Bill of the section dealing with the
Examining Division of the Insurance De-
partment governs the rate of pay and
expense allowance of Examiners conduct-
ing an out of state examination.

Your letter of September 21, 1939 in which you submit
for an opinion of this department the question of the proper
rate of payment of salary and expenses for a Texas examiner
while engaged in examining an out of state insurance company
at the home office of such company has been received.

We deem it advisable to herein set out the pertinent
parts of your inquiry as follows:

"Senate Bill 397, passed by the Forty-sixth
Legislature, Regular Session 1939, amended Section
3 of Chapter 152 of the Regular Session of the
Forty-second Legislature (Article 4690a) pertain-
ing to the examination of insurance companies by the
Chairman of the Board of Insurance Commissioners
of Texas. In providing for the examination of out-
of-state insurance companies and the rate of pay
of Texas Examiners engaged in such work, Senate
Bill 397 contained the following provision:

"' Examiners' remuneration and ex-
penses shall be the same as that which
would be paid by the home state of a
company under examination to persons
conducting the examination of a Texas
company admitted to do business in that
State. If there be no recognized charge

for such services, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine.'

"This Bill contained the emergency clause and was passed in the Senate by a vote of thirty for and one against, and in the House by a vote of one hundred and twelve for and none against, clearly indicating the intention of the Legislature.

"Immediately after this Bill became effective (May 15, 1939), we began operating under its provisions. In all cases where one of our Examiners was assigned to the examination of an out-of-state insurance company, we ascertained from the Insurance Commissioner of the particular state, the rate of pay and expense allowance for his Examiners when assigned to a Texas company, and we have been paying our Examiners such retaliatory rate. This rate has varied greatly depending upon the rate of pay of the particular state and has been applied without regard to the rate of pay in effect when our Examiners are assigned to Texas companies, which latter rate was fixed by the General Appropriation Bill of the Forty-fifth Legislature. For instance, in your opinion No. 3075 you held that in the case of Examiner Homer Sanderford assigned to an insurance company domiciled in New York State, after having determined the applicable New York rate in the examination of Texas companies, we were entitled to pay Mr. Sanderford that same rate and give him the same expense allowance. This per diem rate and expense allowance was in excess of Mr. Sanderford's rate when examining a Texas company in Texas, the applicable New York rate being higher than the Texas rate.

".....

"The question propounded to you is: Do the provisions of Senate Bill 397, quoted, and the provisions of the special rider to the Examining Division appropriation, also quoted, govern the rate of pay and expense allowance to our Examiners in out-of-state examinations, or is that rate fixed according to the positions listed in detail by the General Appropriation

Bill and the expense allowance limited to a maximum of \$4.00 per day by the general rider to the Appropriation bill? This question has been raised by the State Comptroller"

We held in our Conference Opinion No. 3075, dated August 3, 1939, referred to by you, that a Texas insurance examiner conducting an examination in a foreign state of a company incorporated therein and having a permit to transact business in Texas is entitled to compensation and expenses equal to the compensation paid by that particular state to an examiner conducting an examination of a Texas company in Texas, and having a permit to transact business in such foreign state. We further held in such opinion that the Commissioner of Life Insurance of Texas was given a discretion to determine into which classification of examiners established by a foreign state, a Texas examiner should be placed in the event the classifications of Texas and such foreign state are not identical or, in event there is no recognized charge for such service.

Senate Bill No. 397, Acts of the Regular Session of the 46th Legislature by which Articles 4690a and 4690b, Revised Civil Statutes of Texas, were amended, and upon which our above conference opinion was based contained an emergency clause and became effective May 13, 1939. The question submitted resolves itself into the proposition of determining whether salaries and expenses of examiners conducting examinations outside of Texas are to be set by the terms and provisions of Senate Bill No. 397, supra, or, are to be limited to the salary figure set out in the General Appropriation Bill and to the \$4.00 per day limitation upon traveling expenses, thereby avoiding the plain intent of the Legislature as expressed in such Senate Bill No. 397.

Paragraph 5 of Article 4690a taken from Senate Bill No. 397, reads as follows:

"In case of an examination of a company not organized under the laws of Texas, whether such examination is made by the Texas authorities alone, or jointly with the insurance supervisory authorities of another state or states, the expenses of such examination due to Texas' participation therein, shall be borne by the company under examination. Payment of such cost shall be made by the company upon presentation of itemized written statement by the Chairman, and shall consist of the examiners' remuneration and expenses, and the other expenses of the

Department of Insurance properly allocable to the examination. Payment shall be made directly to the Chairman, and all money collected by assessment on foreign companies for the cost of examination shall be deposited in the State Treasury by the Chairman to the credit of the Insurance Examination Fund out of which shall be paid, by warrant of the State Comptroller of Public Accounts on voucher of the Chairman of the Board of Insurance Commissioners, the examiners' remuneration and expenses in the amounts determined by the method hereinafter provided, when verified by their affidavit and approved by the Chairman; and said money is hereby appropriated for that purpose, the balance, if any, to remain in the Insurance Examination Fund in the State Treasury subject to be expended for the purposes as are other funds placed therein. Examiners' remuneration and expenses shall be the same as that which would be paid by the home state of a company under examination to persons conducting the examination of a Texas company admitted to do business in that State. If there be no recognized charge for such service, the Chairman shall fix the remuneration and expense allowance of the examiners at such reasonable figure as he may determine. Acts 1931, 42nd Leg., p. 252, ch. 152, Para. 3, as amended Acts 1939, 46th Leg., S.B. No. 397, Para. 1."

We observe a definite, full and complete appropriation by the Legislature of all funds collected by virtue of such act for carrying out the purposes therein mentioned. There seems to be no question as to its sufficiency from the effective date of such act to September 1, 1939, and you advise that the Comptroller now raises the question of whether the same is effective for the fiscal years, beginning September 1, 1939 and September 1, 1940.

Looking to the terms and provisions of Senate Bill 427, which is the General Appropriation Bill of the 46th Legislature, for the two year period beginning September 1, 1939 and ending August 31, 1941, we find the following pertinent language in the section dealing with the examining division of the Insurance Department:

"For the purposes of paying the foregoing examination expense and such expense as is necessary incident to the examination work and the payment of the salaries of any additional examiners, stenographers, clerks

and such help as is necessary in the administration of the examining division (provided any additional employees performing similar work to the positions designated hereinabove shall not receive a greater sum of compensation than that herein provided), and for defraying all other expenses necessary for the administration of the provisions of Chapter 152 of the General Laws of the Regular Session of the Forty-second Legislature and Chapter 264 of the Forty-fourth Legislature, and any and all amendments thereto, and as amended by Senate Bill 397, Acts Regular Session of the 46th Legislature, 1939, there is hereby appropriated all fees and assessments collected under authority of said Examining Law, together with any balances at the end of a preceding fiscal year, for each of the fiscal years ending August 31, 1940, and August 31, 1941. The head of the department shall make application to the Board of Control and receive its approval in writing before employees, other than those itemized in the appropriation bill, are employed. Said application shall set out the reasons, and necessity for the employment of the additional employees." (Underscoring ours)

Thus, it clearly appears that there is a definite and clear appropriation of all fees and assessments collected under authority of the Examining Law for the purpose of carry-out the terms of Senate Bill 397, supra, as well as the other pertinent statutes.

It is therefore, the opinion of this department and you are so advised that the provisions of Senate Bill 397, supra, and the hereinabove quoted special rider to the Examining Division of the Insurance Department contained in the General Appropriation Bill governs the rate of pay and expense allowance of examiners conducting an out-of-state examination and is to be arrived at in accordance with our conference opinion No. 3075, and that the same shall be effective until August 31, 1941.

Hon. Walter C. Woodward, page 6

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Lloyd Armstrong
Lloyd Armstrong
Assistant

LA:AW:wc

APPROVED OCT 14, 1939
s/Robert E. Kepke
(Acting) ATTORNEY GENERAL OF TEXAS

APPROVED Opinion Committee By s/BWB Chairman